BURN, REAL PROP., (6th ed.) § 124 et seq. The cases in which this rule has been applied have been, with few exceptions, cases in which the covenant was made either for the benefit of other land owned by the covenantee, or else cases of general building plans where the restrictions were put on each lot for the benefit of the others. In such cases the covenant is not personal but is in the nature of an easement upon a servient tenement for the benefit of the dominant. GALE. EASEMENTS. 57. When, however, as in the principal case, the covenant is personal as to the covenantee and at the same time puts a burden upon the land conveyed, the question arises as to whether the entire covenant is not personal on both sides. If it is so considered, the result would logically follow that such an action as was brought here could not be maintained, even though the subsequent grantee takes with notice. The court answered this defense principally on the authority of *Hays* v. *St. Paul M. E. Church,* 196 Ill. 633. It is certain that the court in that case was not forced to pass upon the exact queston involved here, and it is not clear that even the dicta would support the inferences which the court in the principal case drew from it. Perhaps the only case in this country exactly in point is *Dana* v. *Wentworth,* 111 Mass. 291, which supports the defendants' contention, but neither reasons nor authorities were given by the court in that case in support of its decision. In the following cases decided in this country there have been dicta contra to the principal decision; *Hano* v. *Bigelow,* 155 Mass. 341; *Inhabitants of Middlefield* v. *Church Mills Knitting Co.,* 160 Mass. 267; *Los Angeles Univ.* v. *Swarth,* 107 Fed. 298. The question arose in England in the cases of *Catt* v. *Tourle,* [1869] 4 Ch. 654, and *Osborne* v. *Bradley* [1903], 2 Ch. 446, and was decided in accord with the principal case. There seems to be much doubt, however, as to whether they can be said to have settled the law on the point because of the dicta in later decisions. *Formby* v. *Barker,* [1913] 2 Ch. 539. See JOLLY, RESTRICTIVE COVENANTS. 21 et seq. That such decisions would not be approved were the question to come before the House of Lords is to be inferred from the dicta on the tied-public-house cases by some of the Lords in *Earl of Zitt* v. *Hislop,* 7 A. C. at page 447, and *Noakes* v. *Rice,* 27 A. C. at p. 35.

CRIMINAL PROCEDURE—CONTINUANCE.—A material witness was absent on account of illness. The defendant moved for a continuance, which was granted. Thereupon the state, through its attorney, proposed to admit that the witness, if present, would testify to the facts set up in the affidavit in support of the motion. Upon this admission, the court, over the objection of the defendant, ruled that the defendant should proceed to trial. This ruling was assigned as error. *Held,* that the accused has a right to every benefit from the presence of witness, and to deny him the continuance was to deny him his constitutional right to compulsory process for attendance of witnesses. *Tiner* v. *State,* (Ark. 1913) 161 S. W. 195.

This case followed the decisions in *Jones v. State,* 99 Ark. 394, and *Graham* v. *State,* 50 Ark. 161. These cases held that a continuance could not be denied unless the state would admit the truth of the facts set up in the affidavit. Nearly every constitution guarantees the accused the right to com-

pulsory process for the attendance of witnesses. Whether this provision is violated by the refusal of a continuance under the facts of the principal case is a mooted question. In some states a continuance has been so refused without a question raised as to its constitutionality: *Lock* v. *Com.*, 144 Ky. 232; *State* v. *Dickson*, 6 Kan. 209; *Pearce* v. *Territory*, 11 Okl. 438. In other states, such refusal of a continuance has been held constitutional where a reasonable time has been given the accused in which to compel the attendance of witnesses: *State* v. *Daniels*, 49 La. Ann. 954; *State* v. *Fairfax*, 107; La. 624; *State* v. *St. Clair*, 6 Idaho 109; *State* v. *Hoyt*, 140 Ill. 588; or in case compulsory process would be ineffective, as where the witness is outside the jurisdiction: *People* v. *Savant*, 112 Mich. 297; *Keating* v. *State*, 160 Ill. 480; *People* v. *Leyshon*, 108 Cal. 440. The constitutional right to compulsory process for the attendance of witnesses is not a guarantee that witnesses will be present, but only that a reasonable effort may be made to compel attendance; *Smith* v. *State*, 118 Ga. 61; *State* v. *Wilcox*, 21 S. D. 532; *Willard* v. *Santa Barbara Super. Ct.*, 82 Cal. 456. An attachment is properly refused where a witness is sick and unable to attend court: *Terry* v. *State*, 120 Ala. 286; *Gardner* v. *U. S.*, 5 Ind. Terr. 150; *State* v. *McCarthy*, 43 La. Ann. 541. The question then is, if the witness is within the state, but process is unavailable at the time application is made, has the accused the constitutional right to a continuance until it is available? *State* v. *Wiltsey*, 103 Iowa 54, holds that where a witness is sick, no question of compulsory process arises. "On account of the sickness of the witness, process did not avail to bring the witness into court, but the defendant was not thereby deprived of his constitutional right." *Hoyt* v. *People*, 140 Ill. 588, holds that the accused is entitled to a reasonable time for the execution of process to compel attendance of witnesses at the trial, but has no constitutional right to the continuance of causes for trial. Under such holdings, the question in the principal case would be one as to the abuse of discretion on the part of the trial judge, and not a question as to the constitutional rights of the accused.

CRIMINAL PROCEDURE—PRESENCE OF ACCUSED.—In a criminal trial, the jury had deliberated about four hours upon their verdict, and returned into court for further instructions. Thereupon the trial judge prepared and read them a written instruction. Defendant was absent, being confined in the county jail; his attorney was present, but made no objections. On noticing the absence of defendant, the court sent for him, recalled the jury and then read the identical instruction which had been given during his absence. *Held*: That the accused has the right to be present during every moment of the trial, that the giving of instructions in his absence is a part of the trial, and is such prejudicial error as cannot be cured by a re-reading of them in his presence. *State* v. *Beaudin*, (Wash. 1913) 136 Pac. 137.

It is a well established rule that in cases of felony, accused must be present during the entire trial. The courts are almost uniform in holding that the giving of instructions in the absence of accused is reversible error. *Wade* v. *State*, 12 Ga. 25; *State* v. *Myrick*, 38 Kan. 238; *Maurer* v. *People*, 43 N. Y. 1; *Jones* v. *State*, 26 Ohio St. 209. In early English law, when the